

# EXPLANATORY STATEMENT

## **Issued by authority of the Treasurer**

### *National Consumer Credit Protection Act 2009*

#### *National Consumer Credit Protection Amendment (Credit Cards) Regulations 2018*

The *National Consumer Credit Protection Act 2009* (the Credit Act) establishes a national consumer credit regime that requires persons who engage in credit activities to hold an Australian credit licence and comply with responsible lending obligations.

Section 329 of the *National Consumer Credit Protection Act 2009* (the Credit Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *National Consumer Credit Protection Amendment (Credit Cards) Regulations 2018* (the Regulations) is to make consequential changes to the *National Consumer Credit Protection Regulations 2010* (the Credit Regulations) to support the Government's reforms to the Credit Act to improve consumer outcomes under credit card contracts. These reforms were legislated by Schedule 5 to the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018* (the Amending Act).

Schedule 1 to the Regulations extends the infringement notice scheme set out in the Credit Regulations to contraventions of the civil penalty provisions that were introduced by the Amending Act.

An Exposure Draft of the Regulations was released for public consultation from 14 to 23 August 2017 as part of consultation on the Exposure Draft bill and explanatory materials. No submissions were received concerning the Exposure Draft of the Regulations.

Details of the Regulations are set out in the [Attachment](#).

The Credit Act specifies no conditions need to be satisfied before the power to make the Regulations may be exercised.

The Regulations commence on the day after it is registered on the Federal Register of Legislation, except for Item 2 of Schedule 1 to the Regulations, which commences on the later of the day after the Regulations are registered and 1 January 2019. This is because the amendments made by Item 2 of Schedule 1 relate to amendments made by the Amending Act that commence on 1 January 2019.

**Details of the *National Consumer Credit Protection Amendment (Credit Cards) Regulations 2018***

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *National Consumer Credit Protection Amendment (Credit Cards) Regulations 2018* (the Regulations).

**Section 2 – Commencement**

This section provides that each provision of the Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms.

Item 1 of Schedule 1 to the Regulations commences the day after the Regulations are registered on the Federal Register of Legislation.

Item 2 of Schedule 1 to the Regulations commences on the later of the day after the Regulations are registered and 1 January 2019. This is because the amendments made by Item 2 of Schedule 1 to the Regulations relate to amendments made by the Amending Act that commence on 1 January 2019.

**Section 3 – Authority**

This section provides that the Regulations is made under the *National Consumer Credit Protection Act 2009* (the Credit Act).

**Section 4 – Schedule**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

Schedule 1 to the Regulations makes consequential changes to the *National Consumer Credit Protection Regulations 2010* (the Credit Regulations) to support the Government's reforms to the Credit Act to improve consumer outcomes under credit card contracts. These reforms were legislated by Schedule 5 to the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018* (the Amending Act).

The reforms are briefly as follows:

- Reform 1: tighten responsible lending obligations to require that the suitability of a credit card contract for a consumer is assessed on the consumer's ability to repay the credit limit of the contract within a certain period;
- Reform 2: prohibit credit card providers from making any unsolicited credit limit offers in relation to credit card contracts by broadening the existing prohibition to all forms of communication with a consumer and removing the informed consent exemption;

- Reform 3: simplify the calculation of interest charges in relation to credit cards by prohibiting credit card providers from retrospectively charging interest on credit card balances; and
- Reform 4: require new credit card contracts to allow consumers to reduce credit card limits and terminate credit card contracts and require credit card providers to establish and maintain a website that allows consumers to request to exercise these entitlements online.

Schedule 1 to the Regulations extends the infringement notice scheme set out in the Credit Regulations to contraventions of the civil penalty provisions that were introduced by Schedule 5 to the Amending Act in order to support the implementation of reforms 3 and 4. A minor, technical correction is also made to the Credit Regulations.

*Extension of infringement notice scheme*

Item 2 in Schedule 1 to the Regulations amends paragraph (b) of the definition of ‘infringement notice offence’ in regulation 38 of the Credit Regulations to extend the existing infringement notice scheme to the civil penalty provisions introduced by Division 2 of Part 2 and Parts 3 and 4 of Schedule 5 to the Amending Act.

Division 2 of Part 2 and Part 4 of Schedule 5 to the Amending Act implemented reform 4 by introducing requirements in the Credit Act aimed at allowing consumers to reduce the credit limit of their credit card and terminate their credit card contract.

Part 3 of Schedule 5 to the Amending Act implemented reform 3 by introducing a requirement that prohibits credit card providers from imposing interest charges retrospectively to a credit card balance, or part of a balance, that has had the benefit of an interest-free period.

Civil penalty provisions were introduced by Schedule 5 to the Amending Act to support the implementation of reforms 3 and 4.

Item 2 in Schedule 1 to the Regulations amends paragraph (b) of the definition of ‘infringement notice offence’ in regulation 38 of the Credit Regulations to add these civil penalty provisions in the Credit Act to the list of civil penalty provisions that form part of the infringement notice scheme set out in the Credit Regulations. The civil penalty provisions in the Credit Act that are added to the infringement notice scheme set out in the Credit Regulations are subsections:

- 133BF(1);
- 133BFA(2);
- 133BFB(2);
- 133BFC(2);
- 133BS(1);
- 133BT(1);
- 133BU(2);
- 133BV(2); and
- 133BW(2).

*Minor technical amendment*

Item 1 in Schedule 1 to the Regulations amends subparagraph (b)(xxi) of the definition of ‘infringement notice offence’ in regulation 38 of the Credit Regulations to make a minor, technical correction. The reference to ‘subsection 131(2)’ in that provision is corrected so that it refers instead to ‘subsection 131(1)’. The relevant civil penalty provision is contained in subsection 131(1) of the Credit Act.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **National Consumer Credit Protection Amendment Regulations 2018**

Schedule 1 to this Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

Schedule 1 to this Legislative Instrument makes minor and consequential amendments to the *National Consumer Credit Protection Regulations 2010* (the Credit Regulations) to support the implementation of the Government's reforms to improve consumer outcomes under credit card contracts. These reforms were legislated by Schedule 5 to the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018* (the Amending Act).

The amendments extend the existing infringement notice scheme set out in the Credit Regulations to civil penalty provisions introduced by the Amending Act to support the reforms made by the Amending Act. The infringement notice scheme allows a person who is alleged to have contravened a civil penalty provision to pay a penalty to the Commonwealth as an alternative to civil proceedings. Extending the infringement notice scheme in this way is consistent with the existing approach to civil penalty provisions in the Credit Act.

A minor, technical amendment is also made to the Credit Regulations to ensure that the correct provisions in the Credit Act are referred to.

### **Human rights implications**

Schedule 1 to this Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

Schedule 1 to this Legislative Instrument is compatible with human rights as it does not raise any human rights issues.